

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.200 of 2006

Badri Prasad, S/o Parmanand Gupta, Aged 50 yrs, Occupation
Cultivation, R/o Village Budia, Tehsil Ghargoda, Distt. Raigarh (C.G.)
(Plaintiff)
---- Appellant

Versus

1. Gulab Singh, S/o Chandan Singh Aghariya, Aged 45 yrs, Occupation
Cultivation, R/o Village Budia, Tehsil Ghargoda, Distt. Raigarh (C.G.)
2. State of Chhattisgarh, Through Collector, Raigarh
(Defendants)
---- Respondents

For Appellant: Mr. S.N. Nande, Advocate.
For Respondent No.1: Mr. Atul Pandey, Advocate.
For Respondent No.2/State: -
Mr. Adhiraj Surana, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

10/10/2018

1. The substantial question of law involved, formulated and to be
answered in this plaintiff's second appeal is as under: -

“Whether the Lower Appellate Court was justified while
dismissing an application filed under Section 5 of the
Limitation Act and thereby dismissed the entire appeal of
the appellant?”

(For the sake of convenience, parties would be referred
hereinafter as per their status shown in the suit before the trial Court.)

2. The plaintiff's suit for recovery of possession based on title was
dismissed by the trial Court on 20-11-2001 against which he preferred
appeal before the appellate Court on 17-1-2002 with a delay of five
days along with an application for condonation of delay stating inter
alia that his daughter was seriously ill at Jabalpur and he had gone to
Jabalpur to look-after his daughter, therefore, he could not prefer

appeal well in time. The first appellate Court dismissed that appeal and the application on the ground that medical certificate has not been filed against which this second appeal has been preferred in which the substantial question of law has been framed which has been set-out in the opening paragraph of this judgment.

3. Learned counsel for the appellant / plaintiff submits that delay in filing the first appeal was not deliberate, it was bona fide and it was liable to be condoned.
4. On the other hand, learned counsel for respondent No.1 / defendant No.1 supports the impugned order and opposes the second appeal.
5. I have heard learned counsel for the parties and considered their rival submissions and also went through the record with utmost circumspection.
6. Admittedly, the first appeal was filed with a delay of five days, but the appellant / plaintiff filed application for condonation of delay supported by affidavit that he had gone to Jabalpur to look-after his unwell daughter and when he came back on 14-1-2002, he became unwell and therefore, instead of filing appeal on 15-1-2002, he has preferred appeal on 17-1-2002, as such, the delay is bona fide and it be condoned which was opposed by the other side.
7. The Supreme Court in the matter of Collector. Land Acquisition, Anantnag and another v. Mst. Katiji and others¹ while construing the meaning of “sufficient cause” under Section 5 of the Limitation Act, 1963 held that the Courts should adopt a liberal and justice-oriented approach and condoned the delay of four days in filing appeal, under Section 5 of the Limitation Act, 1963. Their Lordships of the Supreme Court further held that the High Court erred in dismissing the appeal

¹ (1987) 2 SCC 107

on hyper technical ground of bar of limitation and observed as under: -

“The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.”

8. Similarly, in the matter of **N. Balakrishnan v. M. Krishnamurthy**² it has been held by the Supreme Court that “sufficient cause” has to be construed liberally especially when the delay is not deliberate and *mala fide*. Relevant portion of the report reads as under :

“11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari*³ and *State of W.B. v. Administrator, Howrah Municipality*⁴.”

9. Reverting to the facts of the present case in light of the aforesaid

2 (1998) 7 SCC 123

3 AIR 1969 SC 575

4 (1972) 1 SCC 366

principle of law laid down by Their Lordships of the Supreme Court, it appears that first appeal has been dismissed as barred by limitation though sufficient cause has been shown for delay, as the plaintiff / appellant could not prefer appeal well in time. The first appeal ought to have been decided on merits by the first appellate Court.

10. As a fallout and consequence of the aforesaid discussion, the order passed by the first appellate Court is set aside and the case is remitted to the first appellate Court to consider and dispose of the appeal on merits within three months from the date of receipt of a copy of this judgment, as the first appeal was preferred on 17-1-2002.
11. The substantial question of law is answered against the defendant and in favour of the plaintiff. The second appeal is allowed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma